

CIVIL REVISION APPLICATION NO. 45 OF 2021

Versus

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RESERVED ON : 24th JUNE, 2021
PRONOUNCED ON : 29th JUNE, 2021

ORDER :-

. Heard.

2. The challenge in this revision application is to the order dated 07.05.2021, passed below Exh.16 in Regular Civil Suit No.18 of 2021. By the impugned order, the application moved for rejection of the plaint, has been rejected. The applicants (defendants in the suit) have, therefore, preferred this revision application.

3. Shri P. R. Katneshwarkar, learned Advocate for the applicants would submit that the respondent (plaintiff) had filed a suit, Regular Civil Suit No.12/1999, against the father of the applicants, for perpetual injunction. The agricultural lands which are subject matter of the present suit were also the subject matter of the said suit (R.C.S. No.12/1999). The suit was decreed. It, however, appears that the agricultural lands (Gut Nos. 1569 and 2391) have inadvertently been not mentioned/referred to in the judgment and the decree passed in the said suit. The respondent-plaintiff had, therefore, a remedy of seeking correction in the judgment and decree. The present suit is, thus, barred on the principle of a person not to be vexed twice for the same cause. The respondent-plaintiff did not have a cause of action to file the present suit. By passing the decree in the former suit, the rights of the parties have been crystalised. In view of Article 137 of the Limitation Act, 1963, the suit is barred. The learned Advocate placed reliance on the judgment of the Apex Court in the case of *Dahiben vs Arvinbhai Kalyanji Bhanushali (Gajra)* – (2020) 7 SCC 366.

4. I have considered the submissions advanced by the learned Advocate for the applicants. Perused the plaint in R.C.S. No.18/2021 and the plaint in R.C.S. No.12/1999. The earlier suit was filed against the father of the applicants. It was a suit for perpetual injunction. The suit was decreed. It appears that the agricultural lands, which are the subject matter of the present suit, were also the subject matter of the previously instituted suit. In the operative part of the judgment and decree passed in the said suit, these two lands appear to have been inadvertently missed out. It is, therefore, said on behalf of the applicants herein that the relief which has not been specifically granted, shall be deemed to have been refused.

5. It is reiterated that the former suit was filed against the father of the applicants herein. The pleadings in the present suit indicate it to be the case of the respondent-defendant that he continued to possess the suit lands. In January and March – 2021, the applicants herein threatened the person who was engaged by the respondent-plaintiff for agricultural operations of the said lands cause of action for suit of perpetual injunction is continuing one. A fresh cause of action can be said to have occurred in January and

March – 2021. The cause of action means a bundle of facts, which the plaintiff must averred, so as to seek relief.

6. Order 7 Rule 11 of the Code of Civil Procedure, speaks of rejection of plaint. It reads thus:-

“11. Rejection of plaint. - The plaint shall be rejected in the following cases :-

(a) where it does not disclose a cause of action;

(b)....

(c)

*(d) where the suit appears from the statement in the plaint to be barred by any law;
.....”*

7. For rejection of the plaint, averments in the plaint have only to be looked into. It has been averred in the plaint that the respondent-plaintiff has been in possession of the suit lands. The applicants-defendants obstructed his possession over the suit land in January, February and March – 2021. In view of the pleadings, it cannot be said that the plaint does not disclose cause action or suit is barred by any law.

8. I have perused the judgment in ***Dahiben’s*** case (supra). There can be no two views over what has been observed by the Apex Court in the said case. It has been observed in the said judgment, as follows:-

“A. Civil Procedure Code, 1908 – Or. 7 R. 11(a) – Object – Exercise of power under – Nature of enquiry to be made by court – Court has to determine whether plaint prima facie discloses cause of action – To ascertain this, court has to read averments in conjunction with documents relied upon in plaint as a whole, without addition or subtraction of any words – It is substance and not form which has to be seen – So read, if cause of action prima facie disclosed, court not required to further enquire about truthfulness of allegations on fact – Pleas taken by defendant in written statement also not relevant at this stage – If however, court finds suit to be manifestly vexatious, not disclosing any right to sue, it would be justified in exercising power under R.11(a).

B.

C. Civil Procedure Code, 1908 – Or. 7 R.11(a) – Cause of action – Meaning – Court has to find whether plaint discloses real cause of action or illusory cause of action created by clever drafting – Court must be vigilant against camouflage or suppression and if suit found to be vexatious and an abuse of process of court, it should exercise its drastic power under R.11 to reject the plaint – Words and Phrases - “Cause of action”.

9. The facts of the present case are altogether different. The reading of the plaint undoubtedly indicate to have disclosed cause of action. The suit cannot be said to be barred by law of limitation. The respondent-plaintiff claims to have been in possession of the suit lands. The applicants-defendants are alleged to have obstructed his possession. The former suit was for injunction simplicitor and filed against the father of the applicants herein. He appears to be no more.

10. The trial Court has rightly rejected the application Exh.16. No case made out to take different view. The revision application therefore, fails. The same is dismissed.

[R. G. AVACHAT, J.]

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